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G.757

PART II - MISCELLANEOUS NOTIFICATIONS OF INTEREST TO THE PUBLIC

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NOTIFICATIONS BY HEADS OF DEPARTMENTS Etc.,

**I ADDL. CIVIL JUDGE'S COURT (SENIOR DIVISION)
GUNTUR**

Friday the 26th day of July, 2024

INSOLVENCY PETITION No.80/2022

Between:

Vajrala Uma Maheswara Reddy, S/o Ramalinga Reddy, Hindu, aged about 51 years, calling-nil, C/o Door No.1-136, Ankireddypalem, Guntur Town, Guntur District.

...PETITIONER.

AND

1. Syamala Raja Sekhara Reddy, S/o Brahma Reddy, Hindu, aged about 31 years, Employee, R/o Ankireddypalem, Guntur Town, Guntur District.
2. Syamala Venkata Ramana Devi, W/o Brahma Reddy, Hindu, aged about 53 years, House wife, R/o Ankireddypalem, Guntur Town, Guntur District.
3. Official Receiver, District Court Complex, Guntur,

...RESPONDENTS.

This petition coming on 19.7.2024 for final hearing before me in the presence of Sri A.S.R.K. Reddy, Advocate for petitioner and Sri P. Venkata Reddy, Advocate for Respondents 1 and 2 and the matter having stood over for consideration till this day, this Court made the following:-

:: O R D E R ::

1. This insolvency petition is filed under Section 10 of the Provincial Insolvency Act¹ to adjudge the petitioner as insolvent.

2. The main case of the petitioner, in brief, is that,

i) The first respondent filed a suit in O.S.No. 10/2018 and obtained a decree against him. Thereafter, the first respondent filed E.P. 48/2021 for proclamation and sale of alleged property. He also filed another E.P. 49/2021 for civil arrest of the petitioner herein. Though he has no immovable property, E.P. 49/2021 was allowed by issuing an arrest warrant against him. Therefore, he may be arrested and sent to the civil prison at any point of time for realization of the decree debt.

ii) The second respondent also filed O.S.3/2018 on the file of Family Court-cum-XII Addl. District Judge Court, Guntur, and obtained a decree. She is also preparing to file an arrest E.P. against petitioner herein.

iii) There is apprehending danger to the petitioner and his family members in the hands of respondents and their followers. In fact, he is not in a position to discharge the decree debt. Except B-schedule property, he has no other properties. Hence, he urged the court to adjudge him as insolvent.

3. On the other hand, respondents 1 and 2 resisted the claim of petitioner by filing a counter. The main case of respondents 1 and 2, in brief, is that:

i) The first respondent is a software employee. On 16.2.2015, the petitioner borrowed Rs. 3,00,000/- and Rs.

1 For brevity, "the Act"

4,00,000/- from him and executed two promissory notes, for his family expenses. Subsequently, despite repeated demands, the petitioner failed to repay the same. Hence, he filed a suit in O.S.No. 10/2018 on the file of IV Addl. Senior Civil Judge, Guntur, for recovery of money. Subsequently, after an elaborate trial, the said suit was decreed on 17.3.2020. After that, he filed E.P. 49/2021 for arrest of petitioner in realization of decree debt.

Similarly, on 16.2.2015, the second respondent also lent Rs. 5,00,000/- and Rs. 4,00,000/- to the petitioner under two separate promissory notes for his family expenses. Subsequently, the petitioner failed to repay the same. On that, the second respondent filed a suit in O.S. 3/2018 on the file of Hon'ble XII Addl. District Judge, Guntur, and after elaborate trial, the same was decreed on 28.7.2022. She is going to file an execution petition for arrest of the petitioner. By knowing the same, the petitioner filed the present I.P. with a view to avoiding payment.

ii) In fact, the petitioner has movable and immovable properties besides cash and gold. But he suppressed his properties by not showing up in the schedule and trying to defraud the respondents. Though the petitioner has the capacity to discharge the debts, he alienated his properties in favour of

his kith and kin prior to filing this petition. Hence, they urged the court to dismiss the petition.

4. **Now the point for determination is:-**

"Whether the petitioner is entitled to be adjudged as insolvent as prayed for?"

5. During the course of enquiry, the petitioner examined PW.1, while relying on Exs. P1 to P4. On the other hand, respondents examined RW1. No document is marked on his behalf.

6. Heard arguments.

7. Perused the record.

P O I N T :-

8. This petition is filed under Section 10 of the Act. So, it is apropos to go through the prerequisites laid down under Section 10 of the Act to enable the debtor to file the petition. The relevant portion of Section 10(1) reads as follows:

Sec.10 (1): "A debtor shall not be entitled to present an insolvency petition, unless he is unable to pay his debts."

9. The very beginning words of Section 10(1) enunciate that, inability to pay the debts is SINE QUA NON for filing an insolvency petition by the debtor.

10. Section 24 deals with 'procedure at hearing'. The relevant portion of Section 24 reads as follows:

Sec.24 (1): "On the date fixed for hearing of the petition, the court shall require proof of the following matters:

(a) The creditor or debtor, as the case may be, is entitled to present the petition.

Provided that, where the debtor is the petitioner, he shall, for the purpose of proving his inability to pay his debts, be required to furnish only such proof as to satisfy the Court that there are prima facie grounds for believing the same.

Sec.24 (2): The Court shall also examine the debtor, if he is present, as to his conduct, dealings and property in the presence of such creditors as appear at the hearing, and the creditors shall have the right to question the debtor thereon."

11. When I.P. filed by the debtor shall be dismissed as laid down under section 25(2) of Provincial Insolvency Act, reads as follows:

"The Court shall dismiss the petition if it is not satisfied of his right to present the petition."

12. On a combined reading of Sections 10, 24 and 25(2), it is abundantly clear that the petitioner/debtor is not entitled to be declared as insolvent merely for asking it, and the Court has to verify the existence of prima facie grounds for considering the plea of the debtor to declare him as an insolvent.

13. At this juncture, it is relevant to go through Judgments of our own High Court. In Dasari Srihari Rao Vs Talluri Harinadha Babu². Wherein the Hon'ble Division bench of our High Court succinctly held as follows:

"The debtor, who files an application to adjudge him as insolvent is under an obligation to satisfy the Court, by furnishing necessary information and any failure in that regard would entail in rejection of the application under Section 25 (2) of the Act."

14. In Kota Sivarama Prasad Vs. Shaik Mastan Vali and another³, the Hon'ble High Court held that,

A debtor cannot be declared as insolvent, unless he establishes satisfactorily by conclusive prove that he is unable to pay debt.

15. In Chittineni Mobana Rao Vs Jagarlmudi Subbarao⁴, the Hon'ble High Court held that,

the proposed insolvent has only to satisfy the court as to existence of prima facie grounds which in turn must disclose that the assets held by him are not adequate to meet the liabilities.

2 2002 (3) ALD 456

3 2014 (3) ALT 602

4 2010 (6) ALD 514

16. In T.Chandraskharaiah Vs. D.Sreramulu Chetty and others⁵, the High Court was pleased to examine the provisions of Insolvency Act extensively with emphasizing on Sec.10 and Sec.24 of the Provincial Insolvency Act. Ultimately, it was held that, even though the petitioner, who seeks himself to be declared as an Insolvent need not prove his case beyond reasonable doubt, but he should lead evidence and or place prima facie material before the Court, so as facilitate the Court to reach to conclusion that he is an Insolvent. He should place all such material before this court which would prima facie show that there exists grounds to believe that he is unable to discharge the debts of the respondents, and he became insolvent.

17. On the touchstone of the above legal principles, this Court now proceeds to test the case of the petitioner/debtor. It is the case of petitioner that he borrowed amounts from respondents 1 and 2 and executed promissory notes, and thereafter, they filed two suits and obtained decrees against him. Further, it is his case that the first respondent filed an E.P. and obtained an arrest warrant, but in fact, he has no other properties except B-schedule property, and he is not in a position to repay the debts as his liabilities exceed his assets.

5 2005 (1) ALT 407

18. On the other hand, respondents 1 and 2 strenuously denied, contending that petitioner has several properties, but he suppressed the same by not showing in petition B-schedule property. Further, petitioner alienated some of his properties in favour of his kith and kin with an intention to avoid payment of debts, further they contended.

19. In view of the rival contentions of both parties and the above point, the burden of proof is undoubtedly on the petitioner to prove his debts and liabilities exceed his properties. In order to prove the same, the petitioner examined himself as PW1. He reiterated the averments of petition in his chief examination affidavit. Respondents 1 and 2 cross examined him. In the cross-examination, respondents 1 and 2 elicited admitted facts, such as filing of E.P.48/2021 on the file of IV Addl. Senior Civil Judge's Court, Guntur, giving evidence in E.P.49/2021, issuance of Rule 38 Arrest warrant in E.P.48/2021, etc.

20. Besides the above evidence, PW1 deposed that he is residing in Yaganti Select, 8th line, Syamala Nagar, for the past 8 years on rent; and that his wife has been paying the rents. Further, he deposed that there are disputes between himself and his wife, but they are living in the same house. Further, he deposed that he is indebted to respondents 1 and 2.

Besides the above, respondents 1 and 2 put their defence by way of suggestions. Of course, PW1 denied the same.

21. In addition to the above, the petitioner relied upon documentary evidence, such as Exs. P1 to P4. Ex.P1 is served copy of execution petition in EP.48/2021 in OS.10/2018 on the file of IV Addl. Senior Civil Judge's Court, Guntur. Ex.P2 is CC of order in EP.48/2021 in OS.10/2018 on the file of IV Addl. Senior Civil Judge's Court, Guntur. Ex.P3 is CC of plaint in OS.3/2018 on the file of Hon'ble XII Addl. District Judge's Court, Guntur. Ex.P4 is CC of sale deed dt.7.11.2014. Exs.P1 to P3 are found to disclose that respondents 1 and 2 filed separate suits in O.S.No. 10/2018 and O.S. 3/2018, against him. Further, they disclose that the first respondent filed two E.P.s. against him. However, it is not in dispute that the first respondent obtained an arrest warrant against him.

22. Petitioner showed particulars of debts taken by him in petition A-schedule. It is noteworthy to reproduce petition A-schedule hereunder:

'A' schedule

Sl.No.	Name	Nature of debt	Amount due in Rs.
1.	Syamala Raja Sekhara Reddy	E.P.48/2021 & E.P.49/2021 in O.S.No.10/2018 on the file of IV Addl. S.C.J., Guntur.	Rs.14,44,899-00
2.	Syamala Venkata Ramana Devi	Decree amount with costs of the suit O.S.3/2018 on the file of Family Court-cum-XII	Rs.15,32,052-00

		Addl. District Court, Guntur. (Rs.15,12,000 + Rs.20,052)	
	TOTAL AMOUNT:		Rs.29,76,951-00

23. Respondents 1 and 2 did not dispute the debts and liabilities of the petitioner shown in the above schedule. Thus, petition A-schedule demonstrates that petitioner is indebted to Rs. 29,76,951/-

24. Now the question is whether his debts exceed his properties. Petitioner shown his properties in petition B-schedule property. Schedule debts and other pecuniary claims due to the petitioner, securities, shares in joint stock companies, cash on hand, and movable properties are shown in B1 to B4 schedules as NIL, while showing wearing apparel (4-pants, 4-shirts and 1-blanket & mat) worth Rs. 2,500/- in the B-5 schedule. Further, he showed his immovable properties in B-schedule as worth of Rs. 3,32,000/-. It is clear from the petition A and B schedules that the debts and liabilities of the petitioner are greater than his assets shown in the B schedule. Thereby, the petitioner discharged his burden.

25. In order to disallow the petition, respondents 1 and 2 would contend that the petitioner screened some of his properties by transferring the same in favour of his kith and kin. In order to prove the same, the first respondent examined himself as RW1. He reiterated the averments of counter in his chief examination affidavit. In the cross-examination, he deposed that he would file a document to

show that the petitioner has movable and immovable properties and gold. Further, he deposed that the petitioner alienated his properties in the names of his relatives and friends. Except making oral allegations, respondents did not file any document evidencing that the petitioner has properties and gold or that he alienated his properties in favour of his relatives and friends.

26. Thus, the respondents did not place any material evidencing that the petitioner suppressed his properties by alienating the same in favour of his kith and kin. Even they did not furnish particulars of those properties. In the absence of material evidence as to properties owned by the petitioner or alienation of properties by the petitioner, the allegations of respondents 1 and 2 cannot be believed.

27. In the light of the aforesaid facts and circumstances, the contentions of respondents 1 and 2 cannot be believed that petitioner has some other properties. Thus, they failed to discharge their onus. On the other hand, the petitioner established that his debts and liabilities exceed his properties. Thereby he complied with mandatory requirements U/Sec. 6 and 10 of the Act. Hence, it is held that the petitioner is entitled to be adjudged as insolvent. Accordingly, this point is answered.

28. In the result, the petition is allowed by adjudging the petitioner as insolvent by giving him six months to discharge. All his

properties are vested with the Official Receiver to deal with them according to the provisions of the Provincial Insolvency Act, 1920. The office is directed to send a copy of this order to the District Collector, Guntur, for Gazette publication in compliance with Sec. 30 of the Provincial Insolvency Act.

Dictated to the Stenographer, transcribed by her, corrected and pronounced by me in the Open Court, on this the 26th day of July, 2024.

Y. Gopala Krishna

I ADDL. CIVIL JUDGE (SR. DIVISION),
GUNTUR.

PPENDIX OF EVIDENCE
WITNESSES EXAMINED

For Petitioners:-

P.W.1: Vajrala Umamaheswara Reddy

For Respondents:-

R.W.1: Syamala Rajasekhara Reddy

DOCUMENTS MARKED

For Petitioners:-

Ex.P1 : Served copy of execution petition in E.P.48/2021 in O.S.10/2018 on the file of IV Addl. Senior Civil Judge's Court, Guntur.

Ex.P2 : Certified copy of order in E.P.49/2021 in O.S.10/2018 on the file of IV Addl. Senior Civil Judge's Court, Guntur.

Ex.P3: Certified copy of plaint in O.S.3/2018 on the file of Hon'ble XII Addl. District Judge's Court, Guntur.

Ex.P4: Certified copy of sale deed dated 7.11.2014.

For Respondents: Nil.

Y. GOPALA KRISHNA,

*I Addl. Civil Judge (Sr. Division),
Guntur.*

[Dis.No.2357.]

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